REMARKS/ARGUMENTS

Claims 1, 20 and 21 have been amended to further particularly point out and distinctly claim subject matter regarded as the invention. The text of claims 2-19 and 22-33 is unchanged, but their meaning is changed because they depend from amended claims.

The 35 U.S.C. § 102 Rejection

Claims 14 and 16-18 stand rejected under 35 U.S.C. § 102(e) as being allegedly anticipated by Emens et al.[1] This rejection is respectfully traversed.

According to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102(a), (b) and (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.[2]

Claim 14 is an independent claim with claims 15-19 depending from claim 14.

The Final Office Action states that "[i]n the remarks applicant argued that (1) in claim 14, Emends failed to teach a query sender as defined by the specification....(3) Emens does not send queries based on any type of determination of the *n* fastest content serving sites....In response to points (1) and (3), Emens taught sending its queries to all mirror sites defined in its list of mirror sites (col. 7, lines 29-42). Emens further taught the step of creating the list of mirror sites includes sending load inquiry requests to the mirror servers, and receiving load information

[1] U.S. Patent 6,606,643

responsive to the load inquiry requests (col. 5, lines 1-17). The load of a mirror site can reflect the response time of the mirror site. This means sending queries to mirror sites are based on the determination of the load information responsive to the load inquiry requests."[3]

Applicant respectfully submits that sending content requests to mirror sites based on load information is not the same as basing a determination of which mirror sites to send queries on the choosing of the *n* fastest content serving sites.

Emens teaches a system wherein first a set of load queries is sent to all mirror sites in the system. The results of these load queries are then compiled to select the optimum content serving site to direct the user's request for content. It then sends the content request to the optimum content serving site. The content request is not a query. Emens has made its decision - it has chosen the fastest site based on the information regarding all mirror sites. There is no further need in Emens to make more queries, let alone make a query based on the load information.

The presently claimed invention, however, sends queries based on a determination of the *n* fastest content serving sites.

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[2] Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).
[3] Final Office Action, pages 10-11.

Applicant respectfully submits that claim 14 is in condition for allowance. As to dependent claims 15-19, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

The First 35 U.S.C. § 103 Rejection

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Emens. This rejection is respectfully traversed.

According to the Manual of Patent Examining Procedure (M.P.E.P.),

> To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure.[4]

Specifically, the Office Action contends that the elements of the presently claimed invention are disclosed in Emens, except that Emens does not teach a response time determiner including an *n* fastest content serving site chooser and an *m* other content serving site chooser. The Office Action further contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teaching of Emens by including an *n* fastest content serving site chooser and an *m* other content serving site chooser because the n content serving sites could include all of the mirror sites as taught by Emens.

[4] M.P.E.P § 2143.

Applicant respectfully submits that claim 15 is in condition for allowance as a dependent claim of claim 14 as discussed above. However, Applicant further submits that the even if *n* is chosen to be equal to all of the mirror sites, Emens still does not teach an *n* fastest content serving site chooser because there is no choosing to be done in that instance. If you are going to send queries to ALL mirror servers in a network, there is no need to choose which are the fastest. All is all. While applicant recognizes that in some instances the present invention may result in sending queries to ALL mirror servers in a network, the Patent Office has attempted to read a step or element into Emens which does not exist, merely because the present invention could potentially create the same result.

For these reasons, Applicant respectfully submits that claim 15 is in condition for allowance.

The Second 35 U.S.C. § 103 Rejection

Claims 1-5, 7-13, 19-25 and 27-33 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Emens in view of Midorikawa et al.[5] among which claims 1, 20 and 21 are independent claims. This rejection is respectfully traversed.

The Final Office Action states that "[i]n the remarks applicant argued that....(4) Midorikawa does not teach timing said queries so that they arrive at each of the n fastest content serving sites and m other content serving sites at the same time....In response to point (4), Midorikawa taught a method of using the response time to execute delay processing to alter the

delay time in order for information to arrive simultaneously at all the terminal devices (col. 5, lines 34-40). Midorikawa did not specifically teach sending queries to the terminal devices. Emens taught sending queries based ont he determination of load information responsive to the load inquiry requests in response to points (1) and (3)."[6]

Applicant respectfully submits that this is incorrect. Emens does not teach sending queries based on the determination of load information responsive to the load inquiry requests. Emens teach sending content requests based on the load information.

Furthermore, claims 1, 20, and 21 have been included to add the element "wherein *n* is less than *s*", where s is the number of multiple content serving sites. Thus, the Office Action's contention that sending queries to all mirror sites anticipates sending queries to *n* fastest mirror sites is clearly moot in light of this amendment.

Thus, Applicant respectfully submits that claims 1,.20, and 21 are in condition for allowance.

As to the dependent claims 2-5, 7-13, 19, 21-25, and 27-33, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

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[5] U.S. Patent 5,953,708
[6] Final Office action, pages 10-11.

The Third 35 U.S.C. § 103 Rejection

Claims 6 and 26 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Emens and Midorikawa in view of Jindal et al.[7]. This rejection is respectfully traversed.

Claims 6 and 26 are dependent claims, and as such, the argument set forth above is equally applicable here. The base claims being allowable, the dependent claims must also be allowable.

In view of the foregoing, it is respectfully asserted that the claims are now in condition for allowance.

Request for Allowance

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

[7] U.S. Patent 6,324,580

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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Dated: 4/15/04

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